

House File 685 - Introduced

HOUSE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 137)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the registration of escrow agents,
2 authorizing fees, and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1143HV 83
5 jr/rj/24

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1 1 Section 1. NEW SECTION. 545.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Commission" means the real estate commission created
1 5 in section 543B.8.
1 6 2. "Escrow" means a transaction wherein a written
1 7 instrument, money, evidence of title to real or personal
1 8 property, or other thing of value is delivered, for the
1 9 purpose of paying an obligation or effecting the sale,
1 10 transfer, encumbrance, or lease of real property located in
1 11 this state, to a person not otherwise having any right, title,
1 12 or interest therein, to be held by that person until the
1 13 happening of a specified event or the performance of a
1 14 prescribed condition, when it is then to be delivered by such
1 15 person to a grantee, grantor, promisee, promisor, obligee,
1 16 obligor, bailee, bailor, or any agent or employee thereof.
1 17 3. "Escrow agent" means a person engaged in the business
1 18 of administering escrows.
1 19 4. "Registrant" means an escrow agent registered under
1 20 this chapter.
1 21 Sec. 2. NEW SECTION. 545.2 REGISTRATION REQUIRED ==
1 22 EXEMPTIONS.
1 23 A person shall not engage in business as an escrow agent
1 24 without first registering pursuant to this chapter. This
1 25 chapter shall not apply to any of the following:
1 26 1. A bank, bank holding company, trust company, savings
1 27 bank, savings and loan association, or credit union that is
1 28 subject to licensing, supervision, or auditing by an agency of
1 29 this state, another state, or the United States, or any
1 30 subsidiary or affiliate thereof.
1 31 2. A mortgage lender or mortgage banker maintaining an
1 32 office in this state whose principal business in this state is
1 33 conducted with or through a mortgage lender or mortgage
1 34 banker, to which this chapter does not otherwise apply and
1 35 which maintains a place of business in this state, including a
2 1 mortgage banker subject to the licensing requirements under
2 2 chapter 535B.
2 3 3. An insurance company organized under the laws of this
2 4 state and subject to regulation by the commissioner of
2 5 insurance, or a wholly owned subsidiary of an insurance
2 6 company with its principal place of business in this state.
2 7 4. A person licensed to practice law in this state
2 8 rendering services in the performance of duties as an attorney
2 9 at law.
2 10 5. A real estate licensee licensed under chapter 543B.
2 11 6. An officer or employee of the federal government, any
2 12 state government, or a political subdivision of the state
2 13 acting in an official capacity.
2 14 7. A person acting under the supervision or order of any
2 15 court.
2 16 8. A qualified intermediary facilitating an exchange under
2 17 section 1031 of the Internal Revenue Code whose role in the
2 18 transaction is limited to acting in such a capacity.

2 19 Sec. 3. NEW SECTION. 545.3 REGISTRATION REQUIREMENTS.

2 20 1. Registration applicants shall submit to the commission
2 21 an application on forms provided by the commission.
2 22 Notification of material changes in the information contained
2 23 in the application must be immediately filed with the
2 24 commission. The application shall be accompanied by a filing
2 25 fee as set by the commission and shall include, at a minimum,
2 26 all of the following:

2 27 a. The applicant's form of business organization and place
2 28 of organization.

2 29 b. If the applicant is a corporation or limited liability
2 30 company, the address of the physical location of its
2 31 headquarters, a list of employees, officers, controlling
2 32 persons, and directors of such corporation or company and
2 33 their residential addresses, telephone numbers, and other
2 34 identifying information as required by rule adopted pursuant
2 35 to this chapter. If the applicant is a sole proprietorship or
3 1 partnership, the address of its business location, a list of
3 2 owners, partners, employees, and controlling persons and their
3 3 residential addresses, telephone numbers, and other
3 4 identifying information as required by rule adopted pursuant
3 5 to this chapter.

3 6 c. The name under which the applicant will conduct
3 7 business.

3 8 d. The name of a natural person to receive service of
3 9 process.

3 10 e. Evidence of compliance with the financial
3 11 responsibility requirements of section 545.7.

3 12 2. A registrant shall be subject to criminal background
3 13 checks. A registration certificate shall not be issued to an
3 14 applicant who has been convicted, including a conviction based
3 15 upon a guilty plea or plea of nolo contendere, of a crime
3 16 which is substantially related to the qualifications,
3 17 functions, and duties of an escrow agent, including, fraud and
3 18 theft. A registrant shall relinquish a registration
3 19 certificate within twenty days of being convicted of such a
3 20 crime.

3 21 3. An applicant who fails to comply with the requirements
3 22 of this section shall not be registered.

3 23 4. A registration certificate issued pursuant to this
3 24 chapter is not transferable.

3 25 Sec. 4. NEW SECTION. 545.4 GRANTING OF REGISTRATION
3 26 CERTIFICATE.

3 27 When the applicant has complied with the requirements as
3 28 set forth in section 545.3, and the commission finds the
3 29 financial responsibility, character, and general fitness of
3 30 the applicant and the members and employees thereof if the
3 31 applicant is a partnership, association, or other organization
3 32 or of the applicant and the officers, directors, and employees
3 33 thereof if the application is a corporation, are such to
3 34 warrant a belief that the applicant's business will be
3 35 operated honestly, soundly, and efficiently in the public
4 1 interest consistent with the purposes of this chapter, the
4 2 commission shall enroll the applicant's name and address in
4 3 the roster of registered escrow agents and issue to the
4 4 applicant a certificate of registration, which certificate
4 5 shall entitle the applicant to practice as an escrow agent in
4 6 this state.

4 7 Sec. 5. NEW SECTION. 545.5 PROHIBITION ON ADMINISTERING
4 8 ESCROWS IN CONJUNCTION WITH MORTGAGE BROKERS == EXCEPTIONS.

4 9 A registrant who is also a mortgage broker subject to
4 10 licensing pursuant to chapter 535B shall not conduct the
4 11 business of administering escrows pursuant to this chapter
4 12 unless the registrant maintains separate escrow accounts,
4 13 books, and records from the registrant's mortgage broker's
4 14 accounts, books, and records, and maintains a mortgage broker
4 15 license under chapter 535B and registers as an escrow agent
4 16 under this chapter.

4 17 Sec. 6. NEW SECTION. 545.6 RENEWALS.

4 18 Certificates of registration shall be valid for a period of
4 19 three years. Registered escrow agents shall renew their
4 20 certificates of registration and pay a renewal fee in the
4 21 manner prescribed by the commission. The commission shall
4 22 prescribe the conditions and reasonable penalties for renewal
4 23 after a certificate's expiration date.

4 24 Sec. 7. NEW SECTION. 545.7 FINANCIAL RESPONSIBILITY.

4 25 1. A registrant shall file with the commission a bond
4 26 furnished by a surety company authorized to do business in
4 27 this state. The bond shall be at a minimum, the amount of one
4 28 hundred thousand dollars. The commission by administrative
4 29 rule may establish an increased bonding requirement amount. A

4 30 registrant shall maintain a bond continuous in nature until
4 31 canceled by the surety with not less than thirty days' notice
4 32 in writing to the escrow agent and to the commission
4 33 indicating the surety's intention to cancel the bond on a
4 34 specific date. The surety bond shall be in a form provided by
4 35 the commission and the applicant or licensee shall be named as
5 1 principal. The bond shall be for the use of this state and
5 2 any persons who may have causes of action against the
5 3 registrant. The bond shall be conditioned upon the
5 4 registrant's faithfully conforming to and abiding by this
5 5 chapter and any rules adopted pursuant to this chapter and
5 6 shall require that the surety pay to this state and to any
5 7 persons all moneys that become due or owing to this state and
5 8 to the persons from the registrant by virtue of this chapter.

5 9 2. A registrant shall maintain a policy of errors and
5 10 omissions insurance executed by an insurer authorized to do
5 11 business in this state in an amount not less than one hundred
5 12 thousand dollars per claim, and two hundred fifty thousand
5 13 dollars in the aggregate.

5 14 3. In lieu of filing a bond, the registrant may pledge an
5 15 alternative form of collateral acceptable to the commission,
5 16 if the alternative collateral provides protection to this
5 17 state and any aggrieved person that is equivalent to that
5 18 provided by a bond.

5 19 4. A bond, errors and omissions policy, or alternative
5 20 form of collateral required by the commission shall be kept in
5 21 full force and effect as a condition precedent to the escrow
5 22 agent's authority to transact escrow business in this state,
5 23 and the escrow agent shall supply the commission with
5 24 satisfactory evidence thereof upon request.

5 25 5. In the event of cancellation of the required bond,
5 26 errors and omissions policy, or alternative form of
5 27 collateral, the commission shall require new evidence of
5 28 financial responsibility. Failure to provide the commission
5 29 with satisfactory evidence shall be considered a violation of
5 30 this chapter. An escrow agent shall inform the commission
5 31 within ten days of any substantial change to a registrant's
5 32 financial responsibility activities, which include bonding and
5 33 insurance carriers and amounts.

5 34 Sec. 8. NEW SECTION. 545.8 CEASE AND DESIST POWERS ==
5 35 INJUNCTIVE RELIEF == SUBPOENAS.

6 1 If the commission has reason to believe that a person is
6 2 conducting business in an unsafe and injurious manner or in
6 3 violation of this chapter or rules adopted pursuant to this
6 4 chapter, the commission has the same cease and desist power
6 5 and authority to take any action to enforce this chapter that
6 6 the commission has under chapter 543B.

6 7 Sec. 9. NEW SECTION. 545.9 TRUST OR ESCROW ACCOUNTS.

6 8 1. All moneys deposited in escrow to be delivered upon the
6 9 close of the escrow or upon any other contingency must be
6 10 deposited in a trust account in a financial institution that
6 11 is insured by the federal deposit insurance corporation or
6 12 national credit union share insurance fund unless another
6 13 financial institution has been designated in writing in the
6 14 escrow instructions.

6 15 2. The moneys when deposited must be designated as trust
6 16 funds or escrow accounts or under some other appropriate name
6 17 indicating that the moneys are not the moneys of the
6 18 registrant.

6 19 3. The trust or escrow account must be an interest-bearing
6 20 account. The interest on the account must be transferred
6 21 quarterly to the treasurer of state and transferred to the
6 22 Iowa finance authority for deposit in the housing trust fund
6 23 established in section 16.181 unless there is written
6 24 agreement between the buyer and seller to the contrary. The
6 25 registrant shall not benefit from interest received on funds
6 26 of others in the registrant's possession.

6 27 4. A registrant shall notify the commission of the name of
6 28 each financial institution in which a trust or escrow account
6 29 is maintained and the name of the account on forms acceptable
6 30 to the commission. A registrant may maintain more than one
6 31 trust or escrow account provided the commission is advised of
6 32 the multiple trust or escrow accounts.

6 33 5. A registrant shall only deposit trust or escrow funds
6 34 in a trust or escrow account and shall not commingle the
6 35 registrant's personal funds or other funds in the trust or
7 1 escrow account with the exception that a registrant may
7 2 deposit and keep a sum not to exceed five hundred dollars in
7 3 the trust or escrow account from the registrant's personal
7 4 funds, which sum shall be specifically identified and
7 5 deposited to cover bank service charges relating to the trust

7 6 or escrow account.
7 7 6. Money deposited in escrow is not subject to execution
7 8 or attachment on any claim against the registrant.
7 9 7. A registrant shall not knowingly keep or cause to be
7 10 kept any moneys in any bank, credit union, or other financial
7 11 institution under any name designating the moneys as belonging
7 12 to a client of a registrant, unless the money was actually
7 13 entrusted to the registrant by the client for deposit in
7 14 escrow.

7 15 Sec. 10. NEW SECTION. 545.10 STATUTORY AND COMMON LAW
7 16 RIGHTS UNAFFECTED.

7 17 The provisions of this chapter do not limit any statutory
7 18 or common law right of any person to bring an action in a
7 19 court for an act involved in the transaction of the escrow
7 20 business or the right of the state to punish a person for any
7 21 violation of a law.

7 22 Sec. 11. NEW SECTION. 545.11 TRANSACTIONS BY FOREIGN
7 23 CORPORATIONS.

7 24 A foreign corporation shall not transact an escrow business
7 25 in this state unless the foreign corporation qualifies under
7 26 chapter 490 and otherwise complies with the provisions of this
7 27 chapter.

7 28 Sec. 12. NEW SECTION. 545.12 CONSUMER FRAUD ACT.

7 29 This chapter does not limit the power of the attorney
7 30 general to determine that any practice is unlawful under the
7 31 consumer fraud Act, section 714.16, and to file an action
7 32 under that section.

7 33 Sec. 13. EFFECTIVE DATE. This Act takes effect July 1,
7 34 2010.

7 35 EXPLANATION

8 1 This bill requires escrow agents to register with the real
8 2 estate commission. Escrow agents generally operate as neutral
8 3 third parties on behalf of sellers and buyers in a real estate
8 4 transaction, accepting funds and documents for delivery to the
8 5 parties when the terms of escrow have been completed.

8 6 Registration may be issued either to individuals or
8 7 businesses. Several entities are excluded from the licensure
8 8 requirements, including: Iowa banks, Iowa mortgage or
8 9 insurance companies, lawyers acting within the scope of their
8 10 practice, real estate brokers and salespersons, government
8 11 employees, and persons acting under the direction of a court.

8 12 The real estate commission issues three-year certificates
8 13 of registration, and holds a surety bond from each registrant.
8 14 The commission may also issue cease and desist orders if a
8 15 registrant is conducting business in an unsafe and injurious
8 16 manner or in violation of the law. As set out in Code section
8 17 543B.48, the commission may impose a penalty not to exceed
8 18 \$2,500 for violation of this Code chapter, and may suspend or
8 19 revoke a registration under Code section 543B.29.

8 20 Under the bill, all moneys deposited in escrow must be
8 21 deposited in an interest-bearing trust account in a financial
8 22 institution that is insured by the federal deposit insurance
8 23 corporation or national credit union share insurance fund
8 24 unless another financial institution has been designated in
8 25 writing in the escrow instructions.

8 26 The bill takes effect on July 1, 2010.

8 27 LSB 1143HV 83

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